Supreme Court, U.S.
FILED

No. 94 489 JUL 11 1994

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

WILLIAM C. FARMER,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE CITY AND COUNTY OF SAN FRANCISCO

Respondent,

ROSS CHEIT, EARL CHEIT and JUNE CHEIT,

Plaintiffs and
Real Parties in Interest.

Petition for Writ of Certiorari to
the Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a California trial court may, consistent with the Due Process Clause, assert personal jurisdiction over a non-resident defendant who has no present contacts with California and who has had no such contact for almost 25 years.

2. Whether the untested allegation of a previously "repressed memory" of tortious conduct in the forum state — no matter how dated — constitutes a sufficient "minimum contact" to support jurisdiction over an out-of-state resident that is otherwise unreasonable.

3. Whether the Due Process Clause authorizes the assertion of jurisdiction over a non-resident defendant based on allegations considered due to the retroactive application of a statute of limitations which is claimed to revive claims that were already time-barred.

LIST OF PARTIES PURSUANT TO RULE 14.1(b)

Pursuant to this Court's Rule 14.1(b), petitioner states that the parties to the proceeding in the California Supreme Court were as follows:

Defendant and petitioner: William C. Farmer.

Respondent: Superior Court of California for the City and County of San Francisco.

Plaintiffs and Real Parties in Interest: Ross Cheit, Earl Cheit and June Cheit.

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DECISIONS BELOW

Plaintiffs served Petitioner in October, 1993 with a battery action entitled *ROSS CHEIT, EARL CHEIT and JUNE CHEIT, Plaintiffs,* v. *SAN FRANCISCO BOYS CHORUS and THE SINGING BOYS OF SAN FRANCISCO BAY, a California corporation, WILLIAM FARMER, and DOES 1-100 inclusive, Defendants*, San Francisco Superior Court Case No. 954272. Appendix at 16.

On December 16, 1993, respondent Superior Court, Hon. William Cahill, denied petitioner's motion to quash service, concluding that, because the alleged cause of action had arisen in California, the court could assert personal jurisdiction. Appendix at 3.

On February 16, 1994, petitioner timely filed his Petition for Writ of Mandate with the California Court of Appeal. The Court summarily denied the petition on February 17, 1994. Appendix at 2.

On March 1, 1994, petitioner timely filed his Petition for Review with the Supreme Court of California. The Supreme Court of California summarily denied the petition on April 12, 1994, with two Justices voting to hear the case. Appendix at 1.

JURISDICTION

The California Supreme Court denied the Petition for Review herein on April 12, 1994. This timely petition invokes the Court's certiorari jurisdiction under 28 U.S.C. § 1257(3). The jurisdictional decision is final for purposes of this petition. See Calder v. Jones (1984) 465 U.S. 783, n.8.

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

This petition raises a question as to interpretation of the due process clause of the Fifth Amendment to the United States

Constitution. The underlying jurisdictional motion concerned California Code of Civil Procedure Sections 418.10 and 340.1. The relevant constitutional provisions and statutory citations are reproduced in the Appendix at 50.

STATEMENT OF THE CASE

This action concerns a series of alleged batteries committed on plaintiff ROSS CHEIT ("CHEIT") by defendant WILLIAM C. FARMER ("FARMER") at defendant SAN FRANCISCO BOYS CHORUS' summer camp in Plumas County, California, between 1965 and 1968. CHEIT resides in Rhode Island. FARMER resides in Texas. CHEIT alleges that he had no memory of any of the alleged incidents of child molestation until August 24, 1992. In order to be timely pled, his causes of action must have accrued, and any harm must have occurred, to CHEIT in Rhode Island and not in California.

FARMER is domiciled in Texas. He has no employees, agents or other representatives in California, pays no taxes in California, is not licensed to and does not conduct any business in California, and does not engage in any economic transactions in the State. FARMER owns no property and has no office there. He is not a party to any contracts to be performed in California. FARMER has had no judicially cognizable contacts with California for a quarter-of-a-century. Appendix at 46.

In the court below, it was undisputed that FARMER would suffer severe and irreparable hardship in attempting to defend himself in California. In fact, such a sustained defense was impossible, because of his and his wife's poor health and their demonstrable impecuniousness. Appendix at 46. The result, predictably, was entry of FARMER's default.

FARMER demonstrated that trial in California would be unreasonable because of the passage of 25 years since the alleged

incidents. Evidence would be gone, and witnesses would be dead or forgetful or will have moved away. In fact, many witnesses would likely be in Rhode Island, site of plaintiff ROSS CHEIT's recovered memory.[1]

On November 19, 1993, defendant FARMER filed a Motion to Quash Service of Summons or to Stay or Dismiss Action and related papers, arguing (1) that defendant FARMER has no minimum contacts with the forum, (2) that the assertion of jurisdiction over defendant FARMER would be extremely unreasonable even if the required minimum contacts existed, and (3) that California is an inconvenient forum. Appendix at 35.

Plaintiffs filed opposition to the motion, arguing *inter alia* that the alleged commission of an intentional tort in California more than 25 years in the past nevertheless satisfies the minimum contacts requirement, although admitting that, but for California Code of Civil Procedure Section 340.1, the plaintiffs' action would be time-barred.

Nevertheless, respondent Superior Court denied FARMER's motion, ruling essentially that the mere allegation that an intentional tort had been committed in the forum 25 years ago provided a sufficient basis for the exercise of *in personam* jurisdiction. The court did state on the record, however, that the decision was not an easy one and that because of the vague statute of limitations, there was no law on the subject. Appendix at 5. The court below never considered, as is constitutionally required, the demonstrable

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[1] False allegations of child molestation are of enormous consequence to FARMER, a teacher. The stigma and inability to find work which flow from the mere accusation, let alone from a default judgment, are enough to destroy him.

unreasonableness of authorizing jurisdiction over FARMER under the circumstances of this case.[2]

REASONS WHY CERTIORARI SHOULD BE GRANTED

A. Court Decisions Are In Conflict As To When Contacts Should Be Measured For Purposes Of Personal Jurisdiction

As a consequence of emerging tolling doctrines and the widely-used "repressed memory" concept, plaintiffs across the country increasingly allege tort causes of action based on extremely dated activities. From a jurisdictional standpoint, however, this common state of affairs now also increases situations in which a defendant — with no present ties of any kind to the forum state — can be charged with conduct allegedly taking place there ten, twenty, or even more years ago.

It is in this unfortunate but recurring predicament that petitioner FARMER finds himself. He has no present contact with the state of California, has had none for a quarter-century and has no financial resources to defend himself in that distant forum. Nevertheless, plaintiff ROSS CHEIT attempts to hale FARMER into California based on an allegation of child molestation — a charge which is vehemently denied — occurring in the 1960's and of which he only recently "recovered" his memory after moving to Rhode Island.

This petition thus raises the important and unsettled question of how a court should analyze long-past contacts for purposes of personal jurisdiction and due process. The lower federal and state

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[2] The California Supreme Court ultimately denied Petitioner's request for review of this question, with two justices voting to grant review. Subsequently, petitioner's default was entered, arguably leaving him with no remedy other than this petition.

courts have split over this critical question, disagreeing over the governing rationale. On the one hand, some courts have held that a single former contact (e.g., an automobile accident) may suffice. On the other hand, different courts analyze the contacts at the time of the lawsuit, when standards of reasonableness and inconvenience logically must be measured.

Traditionally, courts could exercise jurisdiction over defendants if they were physically present in the forum state at the time of service, if they were domiciled there or if they consented to such jurisdiction. *See Burnham v. Superior Court* (1990) 495 U.S. 604. Courts historically analyzed their jurisdiction based on their physical power over the defendant at the time of the action's commencement. *See Pennoyer v. Neff* (1878) 95 U.S. 714.

The proposition that the judgment of a court lacking jurisdiction is void traces back to the English Year Books (*see Bowser* v. *Collins* (Ex Ch 1482) YB Mich 22 Edw IV, f 30, pl 11, 145 Eng Rep 97, and was made settled law by Lord Coke in *Case of the Marshalsea* (KB 1612) 10 Coke Rep 68b, 77a, 77 Eng Rep 1027, 1041. Traditionally, that proposition was embodied in the phrase *coram non judice* ("before a person not a judge"), meaning, in effect, that the proceeding in question was not a judicial proceeding because lawful judicial authority was not present, and could therefore not yield a judgment. In *Pennoyer* v. *Neff* (1878) 95 U.S. 714, 732, this Court announced that the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment, as well.

To determine whether the assertion of personal jurisdiction is consistent with due process, courts rely on traditional principles in marking out the territorial limits of each state's authority. That criterion was first announced in *Pennoyer* v. *Neff, supra*, in which this Court stated that due process "mean[s] a course of legal proceedings according to those rules and principles which have been

established in our systems of jurisprudence for the protection and enforcement of private rights," *id.*, at 733, including the "well established principles of public law respecting the jurisdiction of an independent state over persons and property." *Id.*, at 722. The classic expression of the criterion is in *International Shoe Co. v. Washington* (1945) 326 U.S. 310, where the Court said that a state court's assertion of personal jurisdiction satisfies the Due Process Clause if it does not violate "'traditional notions of fair play and substantial justice.'" *Id.*, at 316, 90 L Ed 95, quoting *Milliken* v. *Meyer* (1940) 311 U.S. 457, 463.

Since *International Shoe*, the issue has been whether these "traditional notions" permit states to exercise jurisdiction over absent defendants in a manner that deviates from the rules of jurisdiction applied in the 19th century. *See*, e.g., *Helicopteros Nacionales de Colombia* v. *Hall* (1984) 466 U.S. 408, 414. The view of most courts in the 19th century was that a court could not exercise *in personam* jurisdiction over a non-resident who had not been personally served with process in the forum. In *Pennoyer* v. *Neff, supra,* the Court ruled the Due Process Clause required that when proceedings "involv[e] merely a determination of the personal liability of the defendant, he must be brought within [the court's] jurisdiction by service of process within the state, or his voluntary appearance." *Id.*, at 733.

Later years, however, saw the weakening of the *Pennoyer* rule. States required, for example, that nonresident corporations appoint an in-state agent upon whom process could be served as a condition of transacting business within their borders (*see*, e.g., *St. Clair* v. *Cox* (1882) 106 U.S. 350), and provided in-state "substituted service" for nonresident motorists who caused injury in the state and left before personal service could be accomplished. *See*, e.g., *Hess* v. *Pawloski* (1927) 274 U.S. 352. These laws were premised on the

essential motion that the defendant was still "present" in the forum when the lawsuit was brought and service effected.

"Historically the jurisdiction of courts to render judgment *in personam* is grounded on their *de facto* power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding on him. *Pennoyer* v. *Neff* (citations omitted). But now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe, supra,* 326 U.S., at 316 (citations omitted).

In other words, this Court in *International Shoe* augmented the physical power theory with a rule that a defendant's *present* minimum contacts with the forum could, if consistent with traditional notions of fair play and substantial justice, satisfy the Due Process Clause. However, since the touchstone of due process is the degree of present hardship imposed on a defendant in defending a lawsuit in a distant forum, and since the minimum contacts test serves only as a substitute for the court's physical power based on presence at the time of service, it necessarily follows that those contacts must be measured at the time the lawsuit is brought, rather than some far earlier time.

The lower federal and state courts have not been consistent in their analysis of this fundamental and important question, particularly in cases such as this one in which there is a significant gap in time between the event giving rise to the lawsuit and its commencement. In apparent acceptance of the fiction underlying the nonresident motorists statutes, some courts reason (at least in the context of recently committed torts) that if the transaction occurred

in the forum state, this will always be a sufficient minimum contact for jurisdiction over nonresidents. *Owens v. Superior Court* (1959) 52 Cal.2d 822, 830; *Carteret Savings Bank, F.A. v. Shushan* (5th Cir. 1992) 954 F.2d 141, 147.

Other courts have looked to contacts arising from the transaction in order to *reject* personal jurisdiction based on post-event contacts. *Farmers Ins. Exchange v. Portage La Praire Mut. Ins. Co.* (9th Cir. 1990) 907 F.2d 911, 913 (post-accident investigation did not establish purposeful availment). Without the necessity of analyzing the present burden of defending the action, these courts have held that "only contacts occurring prior to the events causing the litigation may be considered." *Id.*[3]

In contrast, other courts look, as is analytically proper, to the defendants' relationship to the forum state at the time of commencement and service (when judicial power is asserted over them). *See Hoerler v. Superior Court* (1978) 85 Cal. App. 3d 533, 535 (defendant's domicile contact must be intact when the action is filed). Similarly, courts have examined the related concept of venue and held that "residence" generally is determined at the time of commencement of the action--not at the time of the event giving rise to the claim for relief. *Tenefrancia v. Robinson Export & Import Corp.* (4th Cir. 1990) 921 F.2d 556, 559; *Technograph Printed Circuits, Ltd. v. Packard Bell Electronics Corp.* (C.D. Cal. 1968) 290 F. Supp. 308, 326.

Of course, other jurisdictional concepts focus on the defendant's status at the time of the action's commencement, not at some earlier or later time. *See, e.g., Freeport-McMoRan, Inc. v. K N Energy, Inc.* (1991) 498 U.S. 426 (for diversity purposes, citizenship

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[3] The present burden on the defendant is the "primary concern" when a court analyzes the separate question of whether jurisdiction is reasonable. *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292.

determined at time action commenced); *Rodriguez-Diaz v. Sierra-Martinez* (1st Cir. 1989) 853 F.2d 1027, 1029 (same rule even if citizenship different at time claim arose); *Gavin v. Read Corp.* (E.D. Pa. 1973) 356 F. Supp. 483, 486 (defunct corporation's principal place of business at time claim arose not determinative).

This conflict in jurisdictional analysis is not merely academic. Rather, there is an emerging number of cases in which plaintiffs sue on dated claims that state statutes of limitations have "revived" for a variety of asserted public policy or sociological reasons such as "repressed memories." In view of the modern nature of human travel and relocation, it is common, if not likely, that the defendant--and as here, the plaintiff,--will no longer have ties of any kind to the forum state by the time the action is commenced.

Against this background, plaintiff argues that this Court's "jurisdictional effect" jurisprudence authorizes jurisdiction no matter how dated or unreasonable its *present* assertion. In *Calder v. Jones* (1984) 465 U.S. 783, this Court upheld jurisdiction in a libel suit brought by a California resident based on an article that was the result of intentional defamation causing an effect in the forum. Of course, the *Calder* case and its now substantial prodigy proceed from the notion that the defendant purposefully and recently availed itself of the benefits and protections of local law.

Nothing in *Jones*, *International Shoe* or the cases that follow them offers support for the very different proposition respondent seeks to establish: that a nonresident plaintiff's mere allegation of an intentional tort committed over a quarter-of-a-century ago may serve as the basis for the exercise of *in personam* jurisdiction over a nonresident defendant who has had no judicially cognizable contacts with the forum in over 24 years. Such a rule would abandon traditional notions altogether. Attorneys would have to advise their clients, "Once you have set foot in any state, you remain personally subject to the jurisdiction of each such state's courts, in perpetuity.

All someone, anywhere, has to do is allege that you committed an intentional tort while you were there."

Surely the traditional notions of fair play and substantial justice require some limitation; at a certain point, "minimum contacts" must be so attenuated by the passage of time that there should be a repose of jurisdiction. In *Kulko* v. *Superior Court* (1978) 436 U.S. 84, this Court found 13 years to be too long a time to look back for minimum contacts. In *Hoerler v. Superior Court* (1978) 85 Cal. App. 3d 533, the California Court of Appeal, relying on *Kulko*, found that, notwithstanding the fact that the petitioner and the real party in interest had been married in California and spent 14 years there raising a family and that California had "substantial interests" in protecting its resident children, nevertheless "these interests simply do not make California a 'fair forum' ... in which to require appellant, who derives no personal or commercial benefit ... and who lacks any other relevant contact with the state, either to defend a child-support suit or to suffer liability by default." (citations omitted) *Id.*, 85 Cal. App. 3d, at 535.

In the instant lawsuit, it was undisputed that there were no contacts of any kind with the State of California at the time the action was brought, when out-of-state service was effected, or, for that matter, when the causes of action accrued. It was also undisputed below that FARMER was unable to defend himself in California. Finally, this is not even a case where the effect of the alleged misconduct was felt by a California resident; quite to the contrary, this claim is brought mainly by a Rhode Island resident who alleges "injury" (at least insofar as it was directly experienced) occurring in Rhode Island. As such, California has a limited interest

in resolving this dispute between out-of-state parties. *Cf. Asahi Metal Industry Company* v. *Superior Court* (1987) 480 U.S. 102.[4]

B. Reliance On Dated Contacts Should Require More Than Untested Allegations Or Conclusory Assertions In Order To Justify Jurisdiction

This is an action in which plaintiffs seek to hale petitioner into a distant forum based on an allegation of extremely dated conduct purportedly taking place in the forum. However, the State of California, which requires special appearances to attack jurisdiction, necessarily assumes the validity of the claim in rendering its jurisdictional decision.

Where a defendant moves to quash out-of-state service for lack of personal jurisdiction, the plaintiff has the burden of establishing by a preponderance of the evidence that jurisdiction is proper. *Bruns* v. *DeSoto Operating Co.* (1988) 204 Cal. App. 3d 876, 880. The plaintiff must establish jurisdiction over each defendant separately. *Rush* v. *Savchuk* (1980) 444 U.S. 320, 332; *Calder* v. *Jones* (1984) 465 U.S. 783, 790.

Where the evidence of jurisdictional facts is in conflict, as here, the question of whether a defendant is subject to personal jurisdiction should not depend on mere allegation or conclusory assertion. *De Melo v. Touche Marine, Inc.* (5th Cir. 1983) 711 F.2d 1260, 1271; *Data Disc., Inc. v. Systems Technology Assoc., Inc.* (9th Cir. 1977) 557 F.2d 1280, 1289.

In federal court, where a special appearance is not required, the court ordinarily will defer the jurisdictional question until trial

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[4] Concededly, this case involves two nominal California plaintiffs, CHEIT's parents, who basically allege that they suffered as a result of asserted injuries to their child. Such "relational" torts are barred under California law. *See, e.g., Thing* v. *La Chusa* (1989) 48 Cal. 3d 644; and *Martin by and through Martin* v. *U.S.* (9th Cir. 1993) 984 F.2d 1033.

when, as here, the jurisdictional facts are intertwined with the merits of the action. *Data Disc., supra.* However, in states such as California, the defendant cannot reserve the issue for trial, and the allegations therefore need not be proven with any degree of accuracy in order to support jurisdiction.[5] *See* Cal. Code of Civil Procedure § 418.10.

The practical effect of this situation is that a plaintiff need only allege and conclusorily assert a contact with the forum state -- the contradiction of which at the pleading stage is difficult to impossible. In states that allow the revival of such claims, the defendant is automatically subjected to jurisdiction in distant fora without constitutional protection.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews* v. *Eldridge* (1976) 424 U.S. 319, 333. The essence of due process is the requirement that a person in jeopardy of a serious loss be given notice of the case against him and the opportunity to meet it. *Mathews, supra.*

In this case, California's special appearance rules deprive FARMER of a meaningful opportunity to contest the validity of the purported contact giving rise to jurisdiction. This procedural scheme, when combined with the absence of discovery and the dated nature of the revived claim, violates due process.

C. Even If Minimum Contacts Exist Jurisdiction Is Improper Because It Is Unreasonable

This is a case in which the minimum contact relied upon by the respondent required consideration of an event that facially is barred by the applicable one-year statute of limitations. This

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[5] In this case, the trial court compounded the situation by denying defendant's request for jurisdictional discovery. Appendix at 5.

statutory bar is avoided only by the application of a subsequently enacted statute that is claimed to revive barred causes of action such as that alleged here. Cal. Code of Civil Procedure § 340.1. Jurisdictional reliance on revival of an already-barred claim would violate due process, and a challenge to a similar statute is currently pending before this Court. *First Republic Bank* v. *Pacific Mutual Life Ins. Co.* No. 93-609 (Cert. Granted 1/10/94).

The due process clause requires that the exercise of jurisdiction be reasonable so as to protect a defendant against the burdens of litigating at a distant or inconvenient forum. *Burger King Corp.* v. *Rudzewicz* (1985) 471 U.S. 462; *World-Wide Volkswagen Corp.* v. *Woodson* (1980) 444 U.S. 286. The reasonableness requirement defeats local jurisdiction even if a defendant has purposely engaged in forum-related activities. *Asahi Metal Industry Company* v. *Superior Court* (1987) 480 U.S. 102, 115. Here, the overwhelming burden on FARMER in defending this action in California while doing necessary discovery in Rhode Island, coupled with the passage of 25 years and plaintiffs' reliance on a statute which purports to revive a barred cause of action, render the assertion of jurisdiction unreasonable.

The unique burdens placed upon one who must defend in a distant out-of-state forum based on an extremely dated claim are similar to those imposed upon foreign defendants. In the latter circumstance, this Court has held that such burdens "should have significant weight in ascertaining the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi, supra.* When the plaintiff is not even a local resident, the forum state's "legitimate interests in the dispute have considerably diminished." *Id.*

The court below and real parties in interest refer to certain dated cases concluding that the commission of a tort in the forum is a sufficient contact for jurisdiction over claims arising from that

conduct. However, these cases are distinguishable for two simple reasons: first, they invariably involved torts that were recently committed, so that the fiction of "minimum contacts" originally could be said not to have become attenuated; and second, these cases did not apply the recently emphasized rule from this Court that jurisdiction is improper, even with the existence of minimum contacts, if the assertion of jurisdiction is unreasonable.

This is not a case based on a recent tort or one brought by other than nominal California-resident plaintiffs. Rather, this case is based on alleged misconduct taking place 25 years ago, the kind of conduct which, by its very nature, becomes more difficult to disprove with the passage of time. The burden on the defendant should be the "primary concern" when the Court considers the separate question of reasonableness. *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292.

Reasonableness requires the plaintiff to bring his action, if not where the defendant resides, then at least where the cause of action accrued and where harm, if any, occurred. Although the alleged misconduct occurred in California a quarter-of-a-century ago, this lawsuit "arose" on August 24, 1992 in Rhode Island where plaintiff CHEIT resides. In the alternative, if the cause of action arose 25 years ago, the action is barred by the applicable statute of limitations.

CHEIT relies here on the rule delaying accrual until the plaintiff has discovered the facts establishing the elements of his cause of action. *See DeRose* v. *Carswell* (1987) 196 Cal. App. 3d 1011; *Snyder* v. *Boy Scouts of America, Inc.* (1988) 205 Cal. App. 3d 1318. "Unless awareness of the acts is immediately suppressed the plaintiff would necessarily be aware of the injury, and the hidden nature of the full damage would not bring the delayed accrual rule into play." *Evans* v. *Eckelman* (1990) 216 Cal. App. 3d 1609. Thus, the connection to California (and therefore California's interest

in this case) becomes even more tenuous, since the claim accrued in Rhode Island to a resident of that state.

Plaintiffs point out that California has expressed its interest in this area by passage of Code of Civil Procedure Section 340.1. In fact, plaintiffs go so far as to state that, without Section 340.1, "plaintiff's action would be time-barred." To the degree that Section 340.1 revives a lapsed cause of action, as plaintiffs expressly assert here, the statute would be violative of the United States Constitution. This reliance on an event that should be time-barred is patently unreasonable. It is based on the revival, through vague legislative enactment, of a cause of action that has been barred for decades.

CONCLUSION

The trial court stated that this case presented a "close" question and the California Court of Appeal denied the petition summarily, without opinion. The Supreme Court of California also denied the petition without opinion, although two Justices voted to hear the case. Since, absent review by this Court, petitioner arguably will be left with no choice but to allow his default to stand, he turns to this Court for resolution of these important questions.

For the reasons set forth herein, petitioner respectfully urges the Court to grant certiorari, reverse the decision of respondent

Superior Court of California for the City and County of San Francisco and remand the case with directions to grant the motion to quash.

Dated: July 11, 1994

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APPENDIX

First Appellate District, Division Three. No. A064731
S038267

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

WILLIAM C. FARMER, Petitioner

v.

SAN FRANCISCO COUNTY SUPERIOR COURT, Respondent

ROSS CHEIT, Real Party In Interest

Petition for review DENIED.

Mosk, J. and Kennard, J. are of the opinion the petition should be granted.

[SIGNED]
Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOR THE

FIRST APPELLATE DISTRICT

DIVISION THREE

WILLIAM C. FARMER,

Petitioner,

A064731

vs.

THE SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO,

Respondent;

Super. Ct. # 954272

ROSS CHEIT, et al.,

Real Party in Interest.

_____/

BY THE COURT:

Petition for writ of mandate and/or prohibition is denied. (Merrill, Acting P.J., Chin, J. and Werdegar, J. participated in the decision).

Dated _____

_____[SIGNED]_____ P.J.

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Attorneys for Plaintiffs
ROSS CHEIT, EARL CHEIT and JUNE CHEIT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

ROSS CHEIT, EARL CHEIT and JUNE CHEIT, Plaintiffs, vs. SAN FRANCISCO BOYS CHORUS and THE SINGING BOYS OF SAN FRANCISCO BAY, a California corporation, WILLIAM FARMER, and DOES 1-100, inclusive, Defendants. _____/	NO. 954272 ORDER AFTER HEARING ON DEFENDANT FARMER'S MOTION TO QUASH SERVICE OF SUMMONS OR TO STAY OR DISMISS ACTION Date: December 16, 1993 Time: 9:30 a.m. Dept: 10, Room 457

On December 16, 1993 in Department 10 of the above-captioned court, Defendant William Farmer's Motion to Quash of Summons or to Stay or Dismiss came on for hearing as regularly scheduled. Carleton L. Briggs, Esq. appeared specially for Defendant Farmer, Barry Gorelick, Esq. of the law firm of Duane, Lyman & Seltzer appeared for Plaintiff Ross Cheit and Kim Zeldin, Esq. of Pillsbury, Madison & Sutro appeared for Defendant San Francisco Boys Chorus.

The matter was argued and submitted. Good cause appearing therefore,

IT IS HEREBY ORDERED that Defendant's Motion to Quash Service of Summons or to Stay or Dismiss this action is denied.

Dated: 12/30/93

[SIGNED]

Judge of the Superior Court

Appendix-5

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE WILLIAM CAHILL, JUDGE

DEPARTMENT NO. 10

--OOO--

ROSS CHEIT, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. 954272
	)	
SAN FRANCISCO BOYS CHORUS AND THE SINGING BOYS OF SAN FRANCISCO BAY, A CALIFORNIA CORPORATION, ET AL.,	)	
	)	
DEFENDANTS.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, DECEMBER 16, 1993

REPORTED BY: MARY ELLEN SCHERER, CSR #5208

A P P E A R A N C E S:

FOR PLAINTIFF:

DUANE, LYMAN & SELTZER
BY: BARRY GORELICK, ESQ.
2000 CENTER STREET, SUITE 300
BERKELEY, CA 94704

FOR DEFENDANT FARMER:

BY: CARLETON L. BRIGGS, ESQ.
821 MENDOCINO AVENUE
SANTA ROSA, CA 95401

FOR DEFENDANT SAN FRANCISCO BOYS CHORUS:

PILLSBURY, MADISON & SUTRO
BY: KIM ZELDIN, ESQ.
235 MONTGOMERY STREET
SAN FRANCISCO, CA 94104

THURSDAY, DECEMBER 16, 1993

PROCEEDINGS

THE CLERK: LINE 21, CHEIT VERSUS SAN FRANCISCO BOYS CHORUS.

MR. BRIGGS: GOOD MORNING, YOUR HONOR.

CARLETON BRIGGS MAKING A SPECIAL APPEARANCE ON BEHALF OF DEFENDANT WILLIAM FARMER.

MR. GORELICK: BARRY GORELICK OF DUANE, LYMAN & SELTZER FOR PLAINTIFF ROSS CHEIT.

MS. ZELDIN: KIM ZELDIN ON BEHALF OF THE SAN FRANCISCO BOYS CHORUS.

THE COURT: THE BOYS CHORUS DOESN'T HAVE ANY PAPERS HERE?

MS. ZELDIN: NO. I'M JUST OBSERVING.

THE COURT: JUST HERE TO SEE WHAT HAPPENS?

MS. ZELDIN: YES.

THE COURT: YOU CAME FROM SANTA ROSA FOR THIS?

MR. BRIGGS: YES, YOUR HONOR.

THE COURT: WELCOME.

MR. BRIGGS: THANK YOU, SIR.

THE COURT: THIS IS ANOTHER CLOSE CALL TODAY. I HAVE A LOT OF THESE.

MR. BRIGGS: IT'S AN INTERESTING CASE. THE ISSUE IS FASCINATING BECAUSE --

THE COURT: IT IS, BUT I DON'T KNOW WHAT TO ADD TO THIS BECAUSE THERE'S NO LAW.

MR. BRIGGS: I INVESTIGATED AS WELL AS I COULD. I'M NO EXPERT IN THE AREA, SO I CONSULTED.

I CONSULTED JAMES WAGSTAFFE OVER AT COOPER, WHITE & COOPER. HE SAID THE SAME THING. HE SAID IT'S VERY, VERY DIFFICULT, BUT THERE IS NO LAW, BUT HE CAME DOWN SAYING THAT I WAS CORRECT.

THE COURT: WHICH PART OF THIS IS CORRECT?

MR. BRIGGS: MY POINT --

THE COURT: I GIVE UP THEN, IF HE SAYS YOU'RE CORRECT.

MR. BRIGGS: MY POINT IS SIMPLY THAT ALL OF THE CASES CITED BY THE PLAINTIFFS DEAL WITH THINGS LIKE AN AUTOMOBILE ACCIDENT IN WHICH A YEAR HAS GONE BY, HOW IT'S REASONABLE SIMPLY TO HAIL SOMEBODY BACK INTO CALIFORNIA.

THE COURT: EXCEPT THAT'S WHERE THE TORT HAPPENED.

DOES IT MAKE SENSE TO MAKE THESE PLAINTIFFS, ESPECIALLY THE PARENTS, GO TO TEXAS? I DON'T THINK SO.

IS IT REASONABLE TO GO TO RHODE ISLAND? THAT WAS A GREAT ARGUMENT, BUT IT DOESN'T MAKE SENSE.

THE TORT HAPPENED HERE. THIS OUGHT TO BE WHERE WE DO IT.

MR. BRIGGS: THE ALLEGED TORT DID OCCUR HERE BUT IT OCCURRED HERE 25 YEARS AGO.

THE COURT: I KNOW.

MR. BRIGGS: THAT'S THE PROBLEM.

THE COURT: THERE IS NO OTHER STATUTE OF LIMITATIONS LIKE THIS.

MR. BRIGGS: IF YOU LOOK AT INTERNATIONAL SHOE AND ITS PROGENY, IT LEADS US

TO THE CLEAR CONCLUSION, IF YOU ESTABLISH MINIMUM CONTACT, YOU THEN GO ON TO ANALYZE WHETHER THE EXERCISE OF JURISDICTION IS REASONABLE. YOU DON'T STOP WITH THE CONTACT.

THE COURT: ISN'T IT REASONABLE THAT A TORT THAT OCCURS IN CALIFORNIA IS WHERE THE TRIAL OCCURS?

MR. BRIGGS: ALL THE CASES THAT HAVE HELD THAT HAVE INVOLVED TORTS WHICH OCCURRED CLOSE TO THE TIME IN WHICH THE PERSON WAS HAILED BACK INTO CALIFORNIA. I THINK YOU HAVE TO LOOK AT THE 25 YEARS. IT'S VERY IMPORTANT.

WHAT'S HAPPENED HERE IS A QUARTER OF A CENTURY AGO THIS DEFENDANT CUT ALL TIES TO CALIFORNIA. ARE WE TO ADVISE OUR CLIENTS THAT FOR THE REST OF THEIR LIVES, IF THEY HAVE EVER LIVED IN CALIFORNIA, FOR THE REST OF THEIR LIVES THEY CAN BE HAULED BACK INTO CALIFORNIA?

THE COURT: UNDER A STATUTE REGARDING CHILD MOLESTATION, MAYBE.

MR. BRIGGS: I DON'T THINK THAT THE PARTICULAR TORT CHARGED SHOULD AFFECT THE COURT'S JUDGMENT.

THE COURT: IT DOES BECAUSE OF THE STATUTE OF LIMITATIONS THAT APPLIES TO THIS PARTICULAR ALLEGATION.

MR. BRIGGS: WELL, THAT'S AN INTERESTING POINT, YOUR HONOR. I THINK THAT THE PLAINTIFF'S INTERPRETATION OF 340.1 IS UNCONSTITUTIONAL. I DON'T THINK 340.1 CAN REVIVE A BARRED CAUSE OF ACTION.

THE COURT: THAT'S A DIFFERENT ISSUE. THAT'S NOT BEFORE US HERE.

MR. BRIGGS: IT'S BEFORE US IN ONE RESPECT, YOUR HONOR. WITH RESPECT --

THE COURT: THAT'S DEMURRER OR SUMMARY JUDGMENT OR SOMETHING ELSE.

MR. BRIGGS: CORRECT, YOUR HONOR, BUT IT ALSO GOES TO THE REASONABLENESS OF EXERCISING JURISDICTION. FIRST, YOU HAVE THE 25 YEARS. THEN THE FACT THAT YOU HAVE -- THAT THE PRINCIPAL PLAINTIFF IS A RHODE ISLAND RESIDENT. THE PARENTS, I BELIEVE, HAVE BEEN NAMED HERE MERELY TO KEEP THIS CASE MERE. MARTIN BY AND THROUGH MARTIN, 984 F.2D, 1033 --

THE COURT: WOULD THE RHODE ISLAND RESIDENT BE ABLE TO COME HERE AND ASSERT JURISDICTION? BECAUSE HE LIVED HERE AT THE TIME.

MR. BRIGGS: WELL, ARGUABLY THE HARM DIDN'T OCCUR HERE. THE HARM ALLEGEDLY AROSE IN RHODE ISLAND.

THE COURT: I UNDERSTAND THAT ARGUMENT. THAT'S A GOOD ARGUMENT, BUT I CAN'T ACCEPT THAT ONE. IT WAS A GOOD ARGUMENT.

MR. BRIGGS: THE PROBLEM IS THAT THE FACT THAT THE ONE DEFENDANT IS HERE DOESN'T MEAN YOU CAN DRAG A TEXAS DEFENDANT HERE. I THINK AFTER 25 YEARS --

THE COURT: IF THERE IS A CAR ACCIDENT HERE BETWEEN A TEXAS AND A RHODE ISLAND DEFENDANT, TEXAS AND RHODE ISLAND PARTIES, EVERYBODY CAN GET DRAGGED TO CALIFORNIA. THE ONLY DIFFERENCE IS THIS HAPPENED, ALLEGEDLY

HAPPENED -- I DON'T KNOW IF IT HAPPENED -- 25 YEARS AGO, AND THERE IS A PARTICULAR STATUTE REGARDING CHILD MOLESTATION THAT ALLOWS THE STATUTE TO START TO RUN UPON THE MEMORY OF THE EVENTS.

MR. BRIGGS: HOWEVER, THAT STATUTE DOES NOT REVIVE A LAPSED CAUSE OF ACTION.

THE COURT: I'M NOT TALKING ABOUT THAT. I'M TALKING ABOUT WHETHER WE HAVE PERSONAL JURISDICTION IN CALIFORNIA.

MR. BRIGGS: WHEN YOU'RE EVALUATING WHETHER OR NOT WE HAVE PERSONAL JURISDICTION, YOU HAVE TO LOOK AT THE REASONABLENESS OF THE EXERCISE OF THAT JURISDICTION. NOW IF WE'RE LOOKING AT REASONABLENESS OF EXERCISE, WE HAVE TO LOOK AT WHETHER OR NOT THAT FINDING OF PERSONAL JURISDICTION IS BASED AT LEAST IN PART ON AN UNCONSTITUTIONAL STATUTE.

THE COURT: I DON'T ANALYZE THAT. I DON'T LOOK AT IT THAT WAY. I LOOK AT IT AS FIRST WHETHER WE HAVE JURISDICTION, AND IN SUBSEQUENT MOTIONS I WOULD HAVE TO ANALYZE THAT. IT'S LIKE GRANTING SUMMARY JUDGMENT ON A MOTION TO QUASH SERVICE, AND I CAN'T DO THAT.

MR. BRIGGS: WOULD YOUR HONOR'S REASONING CHANGE IF THE PARENTS WEREN'T PARTIES HERE?

THE COURT: I DON'T KNOW. THE PARENTS ARE PARTIES.

MR. BRIGGS: IS THE ANSWER TO ENGAGE IN LIMITED DISCOVERY REGARDING JURISDICTIONAL MATTERS TO ESTABLISH THAT THE PARENTS REALLY HAVE NO PROPER --

THE COURT: I DON'T KNOW THAT. I GET IN BIG TROUBLE IF I START DOING ADVISORY OPINIONS.

MR. BRIGGS: WELL, IT'S UNUSUAL, BUT PERHAPS YOUR HONOR COULD ALLOW DEFENDANT FARMER, WITHOUT GOING BEYOND A SPECIAL APPEARANCE, TO TAKE DEPOSITIONS OF THE PARENTS AND OF THE PLAINTIFF --

THE COURT: I --

MR. BRIGGS: -- IN ORDER TO DETERMINE THE JURISDICTIONAL ISSUE.

THE COURT: I HAVE ALREADY SAID THAT IF THE RHODE ISLAND RESIDENT AND TEXAS RESIDENT HAD A CAR ACCIDENT IN CALIFORNIA, THAT CALIFORNIA WOULD HAVE JURISDICTION OVER THAT. SO HOW IS THAT DIFFERENT, OTHER THAN THE STATUTE IS 25 YEARS?

MR. BRIGGS: IT'S VERY DIFFERENT. THEN YOU HAVE A RHODE ISLAND RESIDENT SUING FOR HARM THAT OCCURRED IN RHODE ISLAND SUING A TEXAS RESIDENT.

THE COURT: THAT'S IF YOU'RE ACCEPTING YOUR ARGUMENT THAT WHEN HE REMEMBERS THE INCIDENT, THAT'S WHEN THE HARM OCCURS, AND I DON'T AGREE WITH THAT.

COUNSEL.

MR. GORELICK: MY ONLY POINT WOULD BE THAT CCP SECTION 340.1 WAS HELD CONSTITUTIONAL IN THE LIEBIG CASE CITED BY DEFENDANT.

THE SUBSEQUENT CASE IN THE DAILY JOURNAL FROM NOVEMBER OF THIS YEAR IS NOT ON POINT BECAUSE IT SPECIFICALLY EXCLUDES DELAYED DISCOVERY CASES, AND I AGREE WITH THE COURT'S

RULING AND ALL THE POINTS WHICH HAVE BEEN MADE BY THE JUDGE TODAY.

MR. BRIGGS: THE ONLY THING I COULD ADD IS THAT YOU'VE GOT A SITUATION IN WHICH THE ANALYSIS -- I THINK THE COURT HAS STOPPED ITS ANALYSIS AT SAYING A TORT HAS OCCURRED IN CALIFORNIA.

I THINK IT'S ONLY PROPER TO GO BEYOND THAT TO SAY, IS IT FAIR -- EVEN WITH CONTACTS, IS IT FAIR TO EXERCISE JURISDICTION OVER THIS DEFENDANT?

I THINK THE PASSAGE OF TIME IS A FACTOR. I THINK THE FACT THAT THE REAL PLAINTIFF IS A RHODE ISLAND RESIDENT IS A FACTOR.

I THINK THAT THE FACT THAT THE EXERCISE OF PERSONAL JURISDICTION WOULD BE BASED IN PART ON A STATUTE, ON THE INTERPRETATION OF WHICH PLAINTIFFS GIVE IT IS UNCONSTITUTIONAL IS A FACTOR.

AND, FINALLY, I WOULD THINK THAT THE DEFENDANT'S RIGHT TO MOVE TO ANOTHER STATE IS ANOTHER FACTOR. HE HAS A CONSTITUTIONAL RIGHT TO PICK UP AND MOVE. IF WE'RE TO SAY NOW THAT IF SOMEBODY MOVES FROM CALIFORNIA, THAT 25 YEARS LATER THEY CAN BE HAULED BACK INTO CALIFORNIA, THAT IS A MAJOR DEPARTURE FROM CONCEPTS OF REASONABLENESS FROM THE CONSTITUTIONAL CASES.

THE COURT: THIS IS A BIG DEAL ALREADY.

MR. BRIGGS: IN KULKO V. SUPERIOR COURT -- THAT' THE CLOSEST CASE I COULD FIND -- IT WAS 13 YEARS BETWEEN THE TIME THAT THE DEFENDANT LEFT CALIFORNIA AND THE ACTION WAS BROUGHT, AND THE

SUPREME COURT AGREED THAT'S TOO LONG. THEY WERE NOT GOING TO EXERCISE PERSONAL JURISDICTION.

THE COURT: BUT YOU WILL FIND A LOT OF ASBESTOS CASES WHERE SOMEBODY WHO WAS HERE IN 1945 GETS BROUGHT IN BECAUSE THEY SOLD ASBESTOS AT THE HUNTER'S POINT SHIPYARD.

MR. BRIGGS: THAT'S A VERY DIFFERENT KIND OF THING, YOUR HONOR, BECAUSE SOMEONE IS ENGAGED IN A COMMERCIAL TRANSACTION, AND I GRANT THE COURT THAT THE ANALYSIS BECOMES QUITE DIFFERENT THEN.

THE COURT: I DON'T THINK SO.

BUT I UNDERSTAND YOUR ARGUMENTS. I'M NOT SURE I'M RIGHT, BUT I THINK I AM, AT LEAST IN MY SYSTEM, AND SOME OF THE ARGUMENTS YOU ARE MAKING ABOUT CONSTITUTIONALITY ARE NOT -- I DON'T THINK IT'S TIME TO MAKE THOSE DECISIONS HERE. I DON'T KNOW WHAT THE DECISIONS WOULD BE WHEN IT COMES TIME, BUT THOSE ARE OTHER MOTIONS TO COME.

MR. BRIGGS: EVEN IN A LATER CASE, IN HOERLER, YOUR HONOR, BACKING UP KULKO, THE COURT, CALIFORNIA COURTS HAVE HELD THAT EVEN WHEN A COUPLE WAS MARRIED AND RESIDED IN CALIFORNIA, RAISED CHILDREN IN CALIFORNIA 14 YEARS, WHEN ONE OF THEM LEFT CALIFORNIA AND CUT ALL TIES TO CALIFORNIA, IN PERSONA JURISDICTION WOULD NOT LIE.

THE COURT: OKAY. I'M GOING TO ADOPT MY TENTATIVE.

WILL YOU PREPARE THE ORDER PLEASE?

MR. GORELICK: WE WILL PREPARE AN ORDER.

THANK YOU, YOUR HONOR.

THE COURT: GOOD ARGUMENT. THANK YOU.

MR. BRIGGS: THANK YOU.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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Attorneys for Plaintiffs
Rose Cheit, Earl Cheit
and June Cheit

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ROSS CHEIT, EARL CHEIT and JUNE CHEIT, Plaintiffs, v. SAN FRANCISCO BOYS CHORUS and THE SINGING BOYS OF SAN FRANCISCO BAY, a California corporation,	No. 954272 COMPLAINT FOR DAMAGES AND INJUNCTION

WILLIAM FARMER, and)
DOES 1-100, inclusive,)
)
Defendants.)

Plaintiffs ROSS CHEIT, EARL CHEIT and JUNE CHEIT allege as follows:

1. Plaintiff Ross CHEIT is a resident of the State of Rhode Island, and the time of the events described herein was resident of Contra Costa County, California.

2. Plaintiffs EARL CHEIT and JUNE CHEIT are, and at all times material hereto, were, husband and wife, and are the parents of plaintiff ROSS CHEIT. They are, and at all times material hereto were, residents of Contra Costa County, California.

3. Defendant SAN FRANCISCO BOYS CHORUS and THE SINGING BOYS OF SAN FRANCISCO BAY is a corporation organized and existing under the laws of the State of California, with its principal place of business in San Francisco County, California. Said corporation resulted from the merger of the two separate corporations, one of which was known as the SAN FRANCISCO BOYS CHORUS (SFBC). Said corporation generally uses the name of the SAN FRANCISCO BOYS CHORUS, and shall be referred to hereinafter as of SFBC. Said corporation is, and at all times material hereto was, in the business of organizing and managing the training and performing of choral groups of boys aged approximately nine to thirteen.

4. At all times material hereto, SFBC operated a camp located in Plumas County, California, which was attended by virtually all chorus members for a four-week session each summer.

5. Plaintiff ROSS CHEIT was a member of the chorus operated by defendant SFBC in approximately 1965, when he was ten years of age, until 1968, when he was thirteen years of ages.

6. Plaintiff ROSS CHEIT attended the four-week summer camp operated by SFBC during the summers of 1965 through 1968, inclusive.

7. Plaintiffs EARL CHEIT and JUNE CHEIT paid all costs of plaintiff ROSS CHEIT's membership in SFBC, including, but not limited to, the cost of his participation in the SFBC summer camp.

8. Defendant WILLIAM FARMER is a resident of the State of Oregon. From 1965 to 1968, defendant FARMER was a resident of the State of California. At various times from 1965 to 1968, defendant FARMER worked in various capacities at the SFBC camp including the capacity of Camp Administrator in 1968. All of the complained of herein occurred in the State of California.

9. At all times material hereto, the SFBC had an employee called the Music and Camp Director of SFBC who worked at the SFBC summer camp.

10. Plaintiffs do not know the true names or capacities of the defendants sued herein as DOES 1 through 100, inclusive and will amend this complaint to allege the same as soon as ascertained.

11. Each defendant was the agent, employee, co-venture, partner, volunteer, director, or in some manner the agent or principal or both, for each other defendant, and was acting in the course and scope of such agency or employment at all times material hereto. Plaintiffs are informed and believes, and based upon that information and believe, thereon alleges that DOES 1 through 20 were directors of the non-profit organization and, as such had, or should have had, knowledge of the events complained of herein

and/or learned of the events complained herein and ratified them on behalf of Defendant SFBC.

12. All of the events described herein took place in Plumas County, California.

13. While plaintiff ROSS CHEIT was a camper at the SFBC summer camp, he was, on various occasions between 1965 and 1967, and on repeated occasions in 1968, molested by defendant WILLIAM FARMER. While carrying out the sexual molestations that occurred between 1965 and 1967, defendant FARMER was acting within the scope and course of his authority as an employee of the SFBC. While carrying out his repeated sexual molestations during the year 1968, he was acting within the course and scope of his employment as the Administrator of the SFBC summer camp.

14. During the period of time in which the incidents of molestation referred to in paragraph 13 occurred, defendants knew, or should have known, that defendant FARMER had committed acts of sexual violation against other boys who were entrusted to the care and supervision of the staff and/or employees of the S.F.B.C. Said incidents included, but were not limited to:

a. FARMER, on an SFBC overnight camping event, induced a boy into his sleeping bag and pressed his penis against him.

b. FARMER, on an overnight sleeping event, attempted to induce another boy into his sleeping bag when he was start naked.

c. FARMER took a counselor and a camper from the camp to his home in Auburn. While there, he got into bed with the camper and started to stroke the camper's genitals and body. The counselor stopped him, but FARMER again returned to the camper's bed at a later point in time. FARMER than attempted to sexually molest the counselor. The counselor brought

these violations to the attention of the Director of the camp, but no action was taken.

d. A young camper chanced into FARMER's cabin and saw a boy in the cabin with an erection.

15. Plaintiff is informed and believes, and based upon that information and belief, alleges that the defendants SFBC and DOES 1-100 either know, or should have known, that defendant FARMER had committed acts of molestation against plaintiff ROSS CHEIT.

16. At all times material hereto, defendants failed to implement hired procedures and/or supervisor policies designed to prevent incidents of sexual molestation of chorus members and failed to conduct an investigation of incidents of sexual molestation of chorus members.

17. At all times material hereto, defendants SFBC and DOES 1-100 failed to discharge or otherwise discipline defendant FARMER, and failed to notify plaintiffs EARL CHEIT or JUNE CHEIT of any of the incidents of sexual molestation referred to in paragraphs 13 and paragraph 14 of this Complaint.

18. Plaintiff ROSS CHEIT had no memory of any of the incidents referred to in Paragraph 13 until August 24, 1992 and had no knowledge of the events referred to in paragraph 14 until after August 24, 1992.

19. Plaintiffs EARL CHEIT or JUNE CHEIT had no knowledge of any of the incidents referred to in paragraph 13 until they were advised of the incidents by plaintiff ROSS CHEIT in approximately December, 1992. They had no knowledge of the events referred to in paragraph 14 until a point in time after December, 1992.

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FIRST CAUSE OF ACTION
BATTERY (CHILD SEXUAL ABUSE)
(Plaintiff ROSS CHEIT)

20. Plaintiffs incorporate by reference Paragraphs 1 through 19 of this Complaint as though set forth herein in full.

21. While acting as Camp Administrator in 1968, defendant FARMER acted as a managing agent of defendant SFBC. All of the acts of molestation described in Paragraph 13 were committed by defendant FARMER while acting in the course and scope of his duties as an employee and/or agent of SFBC.

22. By hiring and/or retaining Defendant FARMER when the SFBC had, or should have had, knowledge of previous incidents of sexual molestation of boys, the Defendants SFBC and DOES 1-100 authorized, and/or ratified, the incidents of molestation described in Paragraph 13.

23. By failing to discharge or otherwise discipline defendant FARMER with knowledge of his sexual molestation of plaintiff ROSS CHEIT, and/or by failing to report any of the incidents described in paragraph 13 or paragraph 14 of this Complaint to plaintiffs EARL F. CHEIT or JUNE CHEIT, and/or by failing to institute any form of policy for the prevention of incidents of sexual molestation of chorus members, defendants SFBC and DOES 1-100 ratified the incidents of molestation referred to in Paragraph 13.

24. The conduct of defendants as described in paragraphs 20 through 23 herein is the legal cause of damages to plaintiff ROSS CHEIT in an amount to be proved at trial.

25. The conduct of defendants as described in paragraphs 20 through 23 herein was perpetrated with malice, fraud

and oppression, thus justifying the assessment of punitive damages against defendants.

SECOND CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Plaintiff ROSS CHEIT)

26. Plaintiffs incorporate by reference Paragraphs 1 through 25 of this Complaint as though set forth herein in full.

27. As a legal cause of the conduct of defendant FARMER as described in paragraph 13 herein, plaintiff ROSS CHEIT has suffered severe emotional distress, in an amount of damages to be proved at trial.

28. As a legal cause of the defendants' SFBC and DOES 100 authorization and/or ratification of the conduct of defendant FARMER as described in Paragraphs 22 and 23 herein, plaintiff ROSS CHEIT has suffered severe emotional distress in an amount of damages to be proved at trial.

29. The conduct of defendants as described in paragraphs 1 through 25 herein was perpetrated with malice, fraud and oppression, thus justifying the assessment of punitive damages against defendant.

THIRD CAUSE OF ACTION
FRAUD
(Plaintiff ROSS CHEIT)

30. Plaintiffs incorporate by reference Paragraphs 1 through 29 of this Complaint as though set forth herein in full.

31. As an inducement to plaintiff ROSS CHEIT's participation in their summer camp, defendants represented to him on numerous occasions from 1965 to 1968, both orally and in writing,

that the summer camp provided chorus members with a safe and wholesome environment.

32. At various times that some of the representations referred to in paragraph 31 were made, defendants know that SFBC employees and/or agents who would be working at the camp, including defendant FARMER, had sexually molested young boys, including current and/or former chorus members. Defendants' knowledge of these facts imposed on them a duty to disclose these facts to plaintiff ROSS CHEIT.

33. In reliance on the representations of defendants referred to in paragraph 31, plaintiff ROSS CHEIT participated in the SFBC summer camp in the summers of 1965 through 1968 inclusive.

34. The reliance by plaintiff ROSS CHEIT was reasonable because he had no means of ascertaining that the representations were false.

35. The representations referred to in Paragraph 31 were false, and known by defendant to be false when made. The truth was that the SFBC camp environment was neither safe nor wholesome, because chorus members were subject to sexual molestations by defendant FARMER and other SFBC agents or employees. At all times material hereto, defendants failed to disclose to plaintiff ROSS CHEIT their knowledge of sexual molestation as referred to in paragraph 32.

36. Plaintiff ROSS CHEIT suppressed all memory of the incidents of sexual molestation referred to in Paragraph 13 herein until August 24, 1992.

37. The conduct of defendants as described in paragraphs 30 through 35 herein is the legal cause of damages to plaintiff ROSS CHEIT in an amount to be proved at trial.

38. The conduct of defendants as described in paragraph 30 through 35 herein was perpetrated with malice, fraud

and oppression, thus justifying the assessment of punitive damages against defendants.

FOURTH CAUSE OF ACTION
FRAUD
(Plaintiff EARL CHEIT and JUNE CHEIT)

39. Plaintiffs incorporate by reference Paragraphs 1 through 38 of this Complaint as though set forth herein in full.

40. As an inducement to permit plaintiff ROSS CHEIT to participate in their summer camp, defendants represented to plaintiffs EARL CHEIT and JUNE CHEIT on numerous occasions from 1965 to 1968, both orally and in writing, that the summer camp provided chorus members with a safe and wholesome environment.

41. At the time that the representations referred to in paragraph 40 were made, defendants knew that SFBC employees and/or agents who would be working at the camp, including defendant FARMER, had sexually molested young boys, including current and/or former chorus members. Defendants' knowledge of these facts imposed on them a duty to disclose these facts to plaintiffs EARL CHEIT and JUNE CHEIT.

42. In reliance on the representations of defendants referred to in paragraph 40, plaintiffs KARL CHEIT and JUNE CHEIT agreed to entrust plaintiff ROSS CHEIT to the care of defendants at the SFBC summer camp in the summer of 1965 through 1968, inclusive, and to pay all costs of his participation in the SFBC summer camp.

43. The reliance by plaintiffs EARL CHEIT and JUNE CHEIT was reasonable because they had no means of ascertaining that the representations were false.

44. The representations referred to in paragraph 40 were false, and known by defendants to be false when

made. The truth was that the SFBC camp environment was neither safe nor wholesome because chorus members were subject to sexual molestation by defendant FARMER and/or other SFBC agents or employees. At all times material hereto, defendants failed to disclose to plaintiffs EARL CHEIT and JUNE CHEIT their knowledge of sexual molestation as referred to in paragraph 41. Plaintiffs EARL CHEIT and JUNE CHEIT did not learn of the falsity of defendants' representations until approximately December 1992 and thereafter.

45. The conduct of defendants as described in paragraphs 39 through 44 herein is the legal cause of damages to plaintiffs EARL CHEIT and JUNE CHEIT in an amount to be proved in trial.

46. The conduct of defendants as described in paragraphs 39 through 44 herein was perpetrated with malice, fraud and oppression, thus justifying the assessment of punitive damages against defendants.

FIFTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
(Plaintiff ROSS CHEIT)

47. Plaintiffs incorporate by reference Paragraphs 1 through 46 of this Complaint as though set forth herein in full.

48. As an inducement to plaintiff ROSS CHEIT's participation in their summer camp, defendants represented him on numerous occasions from 1965 to 1968, both orally and in writing, that the summer camp provided chorus members with a safe and wholesome environment.

49. At the time that the representations referred to in paragraph 48 were made, defendants knew, or should have known, that SFBC employees and/or agents who would be working at the camp, including defendant FARMER, had sexually molested

young boys, including current and/or former chorus members. Accordingly, they had no reasonable basis for a believe in the truth of these representations.

50. In reliance on the representations of defendants referred to in Paragraph 48, plaintiff ROSS CHEIT participated in the SFBC summer camp in the summers of 1965 through 1968, inclusive.

51. The reliance by plaintiff ROSS CHEIT was reasonable because he had no means of ascertaining that the representations were false.

52. The representations referred to in paragraph 48 false. The truth was that the SFBC camp environment was neither safe nor wholesome because chorus members were subjected to sexual molestation by defendant FARMER and/or other SFBC agents or employees.

53. Plaintiff ROSS CHEIT suppressed all memory of the incidents of sexual molestation referred to in Paragraph 13 herein until August 24, 1992.

54. The conduct of defendants as described in paragraphs 47 through 52 herein is the legal cause of damages to plaintiff ROSS CHEIT in an amount to be proved at trial.

SIXTH CAUSE OF ACTION

FRAUD

(Plaintiff EARL CHEIT and JUNE CHEIT)

55. Plaintiffs incorporate by reference Paragraphs 1 through 54 of this Complaint as though set forth herein in full.

56. As an inducement to permit plaintiff ROSS CHEIT to participate in their summer camp, defendants represented to plaintiffs EARL CHEIT and JUNE CHEIT on numerous occasions

from 1965 to 1968, both orally and in writing, that the summer camp provided chorus members with a safe and wholesome environment.

57. At the time that the representations referred to in paragraph 56 were made, defendants knew, or should have known, that SFBC employees and/or agents who would be working at the boys, including current and/or former chorus members. Accordingly, they had no reasonable basis for belief in the truth of these representations.

58. In reliance on the representations of defendants referred to in paragraph 56, plaintiffs EARL CHEIT and JUNE CHEIT agreed to entrust plaintiff ROSS CHEIT to the care of defendants at the SFBC summer camp in the summers of 1965 through 1968, inclusive, and to pay all costs of his participation in the SFBC summer camp.

59. The reliance by plaintiffs EARL CHEIT and JUNE CHEIT was reasonable because they had no means of ascertaining that the representations were false.

60. The representations referred to in paragraph 56 were false, and known by defendants to be false when made. The truth was that the SFBC camp environment was neither safe nor wholesome because chorus members were subject to sexual molestation by defendant FARMER and/or other SFBC agents or employees.

61. Plaintiffs EARL CHEIT and JUNE CHEIT did not learn the falsity of defendants' representations until approximately December 1992.

62. The conduct of defendants as described in paragraphs 55 through 60 herein is the legal cause of damages to plaintiffs EARL CHEIT and JUNE CHEIT in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
NEGLIGENT HIRING

(Plaintiff ROSS CHEIT)

63. Plaintiffs incorporate by reference Paragraphs 1 through 62 of this Complaint as though set forth herein in full.

64. As the operators of a summer camp at which young boys would entirely in their care and under their supervision form a period of four weeks, defendants and plaintiff ROSS CHEIT a duty of care in the selection of all agents and employees who were to serve in any capacity at the camp, to protect him from the risk of sexual molestation by agents and/or employees of SFBC.

65. Defendants breached their duty as described in Paragraph 64 by hiring persons, including defendant FARMER, when they knew, or should have known, that such persons had sexually molested young boys, including current and/or former chorus members.

66. Plaintiff ROSS CHEIT suppressed all memory of the incidents of sexual molestation referred to in Paragraph 13 herein until August 24, 1992.

67. The conduct of defendants as described in paragraphs 63 through 65 herein is the legal cause of damages to plaintiff ROSS CHEIT in an amount to be proved at trial.

EIGHTH CAUSE OF ACTION
NEGLIGENT HIRING
(Plaintiff ROSS CHEIT)

68. Plaintiffs incorporate by reference Paragraphs 1 through 67 of this Complaint as though set forth herein in full.

69. As the operators of a summer camp at which young boys would be entirely in their care and under their supervision for a period of four weeks, and with knowledge that the

decision to entrust the boys to their care would be made by the boys' parents or guardians, defendants and owed plaintiffs EARL CHEIT and JUNE CHEIT a duty of care in the selection of all agents and employees who were to serve in any capacity at the camp, to protect plaintiff ROSS CHEIT from the risk of sexual molestation by agents and/or employees of SFBC.

70. Defendants breached their duty as described in Paragraph 69 by hiring persons, including defendant FARMER, they knew, or should of known, that such persons had sexually molested young boys, including current and/or former chorus members.

71. Plaintiffs EARL CHEIT and JUNE CHEIT did not learn facts constituting defendants' breach of duty until approximately December 1992.

72. The conduct of defendants as described in paragraphs 68 through 70 herein is the legal cause of damages to plaintiffs EARL CHEIT and JUNE CHEIT in an amount to be proved at trial.

NINTH CAUSE OF ACTION
NEGLIGENT SUPERVISION
(Plaintiff ROSS CHEIT)

73. Plaintiffs incorporate by reference Paragraphs 1 through 72 of this Complaint as though set forth herein in full.

74. As the operators of a summer camp at which young boys would be entirely in their care and under their supervision for a period of four weeks, defendants owed plaintiff ROSS CHEIT the duty of care in the supervision of all agents and employees who were to serve in any capacity at the camp, to protect him from the risk of sexual molestation by agents and/or employees of SFBC.

75. Defendants breached their duty as described in Paragraph 74 by failing to discharge or other discipline persons, including defendant FARMER, when they knew, or should have known, that such persons had sexually molested young boys including current and/or former chorus members.

76. Plaintiff ROSS CHEIT suppressed all memory of the incidents of sexual molestation referred to in Paragraph 13 herein until August 24, 1992.

77. The conduct of defendants as described in paragraphs 73 through 75 herein is the legal cause of damage to plaintiff ROSS CHEIT in an amount to be proved at trial.

TENTH CAUSE OF ACTION
NEGLIGENT SUPERVISION
(Plaintiff ROSS CHEIT)

78. Plaintiffs incorporate by reference Paragraphs 1 through 77 of this Complaint as though set forth herein in full.

79. As the operators of a summer camp at which young boys would be entirely in their care and under their supervision for a period of four weeks, and with knowledge that the decision to entrust the boys to their care would be made by the boys' parents or guardians, defendants owed plaintiffs EARL CHEIT and JUNE CHEIT a duty of care in the selection of all agents and employees who were to serve in any capacity at the camp, to protect plaintiff ROSS CHEIT from the risk of sexual molestation by agents and/or employees of SFBC.

80. Defendants breached their duty as described in Paragraph 79 by failing to discharge or other discipline persons, including defendant FARMER, when they knew, or should have known, that such persons had sexually molested young boys, including current and/or former chorus members.

81. Plaintiffs EARL CHEIT and JUNE CHEIT did not learn the facts constituting defendants' breach of duty until approximately December 1992.

82. The conduct of defendants as described in paragraphs 78 through 80 herein is the legal cause of damages to plaintiffs EARL CHEIT and JUNE CHEIT in an amount to be proved at trial.

ELEVENTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(Plaintiff ROSS CHEIT)

83. Plaintiffs incorporate by reference Paragraphs 1 through 82 of this Complaint as though set forth herein in full.

84. As the operators of a summer camp at which young boys would be entirely in their care and under their supervision for a period of four weeks, defendants owed plaintiff ROSS CHEIT the duty of care to disclose to him the nature and significance of any incidents of sexual molestation by agents and/or employees of SFBC.

85. Defendants breached their duty as described in Paragraph 84 by failing to advise plaintiff ROSS CHEIT at any time of the nature or significance of the incidents of molestation referred to in Paragraph 13, when they knew, or should have known, of each and every such incident.

86. Plaintiff ROSS CHEIT suppressed all memory of the incidents of sexual molestation referred to in Paragraph 13 herein until August, 1992.

87. The conduct of defendants as described in paragraphs 83 through 85 herein is the legal cause of damages to plaintiff ROSS CHEIT in an amount to be proved at trial.

TWELFTH CAUSE OF ACTION

INJUNCTIVE RELIEF
(Plaintiff ROSS CHEIT)

88. Plaintiffs incorporate by reference Paragraphs 1 through 87 of this Complaint as though set forth herein in full.

89. At all times material hereto, up to and including the present, defendants have failed to investigate incidents of sexual molestation of chorus members, failed to discharge or otherwise discipline SFBC agents and/or employees who are known to have been involved in incident of sexual molestation of chorus members, and failed to implement policies for the prevention or investigation of incidents of sexual molestation of chorus members.

90. The failure of defendants to take preventive or corrective action as described in Paragraph 89 constitutes a continuing ratification of the conduct described herein, continues to inflict damage on plaintiffs, and threatens to cause irreparable injury in that defendants' threat to the safety and security of chorus members continue unabated to this day.

91. The threat of continuing injury to plaintiffs and others is incapable of being remedied by money damages.

WHEREFORE, plaintiffs pray for relief as follows:

1. For judgment in their favor, and against all defendants;

2. For compensatory damages in an amount to be proved at trial;

3. For punitive damages in an amount to be proved at trial;

4. For an injunction requiring defendants to investigate incidents of sexual molestation of chorus members from 1965 to the present; to discharge any current SFBC agents and/or employees who are known or found to have been involved in

incidents of sexual molestation of chorus members, and to implement policies for the prevention or investigation of incidents of sexual molestation of chorus members;

5. For costs and attorneys' fees incurred herein; and

6. For such other and further relief as the Court deems just and proper.

Dated: 8/17/93

DUANE, LYMAN & SELTZER

[SIGNED]

By: Richard P. Duane

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Attorney for Specially Appearing Defendant
WILLIAM C. FARMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ROSS CHEIT, EARL CHEIT) and JUNE CHEIT,)	Case No. 954272
Plaintiffs,)	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT FARMER'S MOTION TO QUASH SERVICE OF SUMMONS OR TO STAY OR DISMISS ACTION
v.)	
SAN FRANCISCO BOYS) CHORUS and THE SINGING) BOYS OF SAN FRANCISCO) BAY, a California corporation,) WILLIAM FARMER, and) DOES 1-100, inclusive,)	

Defendants.)
)

Date: December 16, 1993
Time: 9:30 A.M.
Dept.: 10, Room 457
Trial Date: None
Arbitration Date: None

I.

INTRODUCTION

This is an action brought by an out-of-state plaintiff based on an incident allegedly taking place over 25 years ago. In order to avoid the obvious statute of limitations defense, plaintiff ROSS CHEIT ("CHEIT") alleges that the causes of action recently accrued while he was a resident of Rhode Island. As will be demonstrated below, because defendant WILLIAM C. FARMER ("FARMER") has had no minimum contacts with the State of California for well over two decades, and because requiring FARMER to defend this action thousands of miles from where he resides would be unreasonable, the assertion of personal jurisdiction over FARMER is prohibited by the United States Constitution.

II.

NATURE OF ACTION

This action arises out of a series of alleged batteries (child molestations) against plaintiff CHEIT by defendant FARMER at SAN FRANCISCO BOYS CHORUS' ("SFBC") summer camp in Plumas County, California, between 1965 and 1968. (Complaint, ¶¶ 4, 13.) CHEIT resides in the State of Rhode Island. (Complaint, ¶ 1.)

CHEIT alleges that he had no memory of any of the alleged incidents of molestation until August 24, 1992, a memory presumably revived while he was in Rhode Island. (Complaint, ¶ 18.)[1] CHEIT is therefore struck with the fact that, in order to be

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[1] CHEIT here relies on the rule delaying accrual until the plaintiff has discovered the facts establishing the elements of his cause of action. See DeRose v. Carswell, 196 Cal.App.3d 101 (1987); Snyder v. Boy Scouts of America, Inc., 205 Cal.App.3d 1318 (1988). "Unless awareness of the acts is immediately suppressed the plaintiff would necessarily be aware of the injury, and the hidden nature of the full damage would not bring the delayed accrual rule into play." Evans v. Eckelman, 216 Cal.App.3d 1609 (1990). See Code Civ. Proc. § 340.1.

timely pled, his causes of action must have accrued, if at all, in Rhode Island and not in California.

III.

STATEMENT OF FACTS

A. Farmer's Absence of Contacts With California

Defendant FARMER resides and is domiciled in the State of Texas. (Declaration of Farmer, ¶ 2.) FARMER has no employees, agents or other representatives in the State of California, pays no taxes in the State of California, is not licensed to and does not conduct any business in the State of California and does not engage in any economic transactions in the State of California. (Id., ¶ 4.) He owns no property here and has no office in this State. (Id. at ¶¶ 2-4) FARMER is not a party to any contracts to be performed in California. (Id., ¶ 4.) It cannot be disputed that when the causes of action sued upon herein allegedly accrued, and the harm allegedly occurred, said harm, if any, occurred in the State of Rhode Island.

B. Severe Unreasonableness And Hardship For Defending Action In California

FARMER has had no contacts with the State of California for over a quarter-of-a-century. He has raised a family in another state and currently is residing in the State of Texas in a borrowed mobile trailer so that he can be near his daughter and grandchildren. It would be more than a severe hardship for FARMER to defend his actions in California -- it would impossible. FARMER has been out of work for an extended period and he now has a small, part-time job. His wife has just been diagnosed as having uterine cancer and he simply cannot afford to nor can he in good conscience travel to California to participate in depositions, court hearing or other proceedings. (Declaration of FARMER, ¶ 7.)

Putting to one side the merits of the plaintiffs' allegations which are strenuously denied by FARMER, there is no dispute that the cause of action accrued while CHEIT was in Rhode Island, not California. It is, of course, not entirely clear why the plaintiffs have named FARMER, who is obviously without assets in an action filed thousands of miles from where FARMER resides. It is also not clear why the complaint, displayed brazenly to the press and reported somehow as true, includes allegations made by others having no relationship to the causes of action stated here. Furthermore, the claim of CHEIT's parents for fraud is obviously without basis as a barred "associational tort,"[2] and their inclusion is for the transparent purpose of adding California plaintiffs.

FARMER has been advised that his co-defendant will not pay his costs of the defense, and there is an inherent conflict of interest prohibiting joint representation. FARMER has been able to obtain counsel for the limited purpose of this special appearance, and he will be without a lawyer in the event he is required to defend the action in this State.

IV.
ARGUMENT

A. California Law Does Not Permit The Exercise Of Jurisdiction Over A Party Unless He Has "Minimum Contacts" With California

Due process prohibits the courts from exercising jurisdiction over persons who do not have sufficient minimum contacts with California to render the exercise of jurisdiction reasonable under contemporary standards. International Shoe Co. v. Washington, 326

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[2] Lugosi v. Universal Pictures, 25 Cal.3d 813, 821 (1979); Coverston v. Davies, 38 Cal.2d 315, 323-24 (1952); Hendrickson v. California Newspapers, Inc., 48 Cal.App.3d 59, 62-63 (1975).

U.S. 310 (1945); Kulko v. Superior Court, 436 U.S. 84 (1978). The classic test is whether the exercise of jurisdiction would "offend traditional notions of fair play and substantial justice." International Shoe, 326 U.S. at 316.

There are two types of personal jurisdiction: general and limited. A court has "general" jurisdiction over a nonresident defendant if his activities in California are extensive, wide-ranging or substantial, continuous, and systematic. Alexander v. Heater, 193 Cal.App.3d 1241, 1244 (1987); Spirits, Inc. v. Superior Court, 104 Cal.App.3d 918, 923 (1980). Obviously, FARMER lacks such general contacts.

The Court may have limited jurisdiction over a defendant that has sufficient "minimum contacts" with the state and where the cause of action arises out of these contacts. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477-78 (1985). However, the federal due process clause requires that in all such cases the exercise of jurisdiction must be reasonable so as to protect a defendant against the burdens of litigating at a distant or inconvenient forum. Id.; see also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

When a defendant challenges personal jurisdiction, the burden shifts to the plaintiff to establish jurisdiction. Ziller Electronics Lab GMBH v. Superior Court, 206 Cal.App.3d 1222, 1229 (1988); Kaiser A[illegible]a v. I.C. Deal, 86 Cal.App.3d 896, 904 (1978); Mihlon v. Superior Court, 169 Cal.App.3d 703, 710 (1985). This requires proof by a preponderance of the evidence. Kaiser Aetna, supra, 86 Cal.App.3d at page 904. The plaintiff must establish jurisdiction over each defendant separately. Rush v. Savchuk, 444 U.S. 320, 332 (1980); Calder v. Jones, 465 U.S. 783, 790 (1984).

B. The Assertion Of Jurisdiction Over FARMER Is Unreasonable

The sine qua non of the assertion of personal jurisdiction over a defendant is that it must be reasonable. Burger King Corp. v. Rudzewicz, 474 U.S. 462, 477-78 (1985). Courts have uniformly held that the "reasonableness" requirement defeats local jurisdiction even if a defendant has purposely engaged in forum-related activities. Asahi Metal Industry Company v. Superior Court, 480 U.S. 102, 115 (1987).

One thing must be noted at the outset. It is simply not relevant that these plaintiffs have made grandiose and publicized allegations about purported acts taking place in the forum more than 25 years ago. In evaluating the reasonableness of jurisdiction, the Court is not to take into account the merits or demerits of an actio nor can it subjugate due process concerns simply because allegations, if believed, present sympathetic circumstance.

In evaluating the reasonableness of jurisdiction over an out-of-state defendant, the Court will consider, among others, the following factors: (1) the burden on defendant in appearing locally, (2) the extent of the defendant's "purposeful" interjection, (3) the existence of an alternate forum, and (4) the forum state's interest in adjudicating the dispute. Burger King Corp., supra.

For example, in Fields v. Sedgwick Associate Risks, Ltd., 796 F.2d 299 (9th Cir. 1986), the Court held it was unreasonable for California courts to exercise jurisdiction over an English insurer on a claim by an insured who was a British subject and who spent half his time in England. The Court emphasized that there was a significant burden on the out-of-state defendant to defend the action and there was an alternate forum in England.

The United States Supreme Court has in the past several years consistently emphasized that the due process clause of the Fifth Amendment imposes substantial restrictions on the ability of local courts to assert jurisdiction over out-of-state defendants when the

assertion of such jurisdiction would be unreasonable. See Burger King Corp., supra; Asahi Metal Industry Company v. Superior Court, supra; World-Wide Volkswagen, supra.

In the present case, the burden on FARMER in defending this action in California is more than substantial; it would lead virtually to a default judgment, since he has no ability to defend himself here. Although he has no assets, a finding against him in this lawsuit would have a profound impact upon his reputation and his life. Plainly, he should be given the opportunity to demonstrate in a convenient forum that the allegations in the complaint are sham and the product not of a "found memory" but of a twisted obsession born of vindictiveness.

FARMER simply is unable to travel to California given his lack of resources and his and his wife's physical conditions. Not only would it be virtually impossible for him to attend trial, he could not, as would be entirely necessary, attend depositions of other witnesses so that he could assist any counsel and face these accusations. It goes without saying that the numerous witnesses in Oregon and in Texas who could testify as to FARMER's intervening activities, his character, and his own damages in the likely even of a cross-complaint for libel and slander, could not be transported to California for discovery or trial.

It is important to underscore that this case does not involve a California plaintiff (except for the improperly joined parents nor does it involve a cause of action that even accrued in the State of California. It is also not improbable that even the plaintiffs will argue that California law does not govern all the incidents involved in this case, since CHEIT secretly tape-recorded a telephone conversation with the defendant which, if governed by California law, would constitute both a crime and a civil tort under California Penal Code § 632 et. seq.

If plaintiffs are truly serious in their attempt to obtain money damages from FARMER, then there is an alternate forum available: Texas. If, as suspected, this lawsuit is being brought against this impecunious defendant to obtain publicity and to "punish" him then the State of California has limited interest, if any, in serving such motives of such an out-of-state plaintiff.

There are certain dated cases which have held that if a defendant commits a liability-producing act while physically present in the forum state, this would be a "contact" that may, in appropriate cases, support personal jurisdiction arising from those acts. See Hess v. Pawloski, 274 U.S. 352 (1927). However, the United States Supreme Court in the Burger King case has emphasized that even where there are minimum contacts with the state, the reasonableness requirement stands alone. This is entirely sensible, of course, since that requirement derives from the federal due process clause, and a defendant's purely attenuated presence in the state would be insufficient where there is a serious inconvenience and hardship in defending the action locally.

There is an even more fundamental reason for distinguishing these decisions upholding jurisdiction based on local activities. This is a case in which the alleged act occurred a quarter-century ago and both the plaintiff and the defendant have moved from the State. Putting to one side the question of whether such a statutory revival of a previously barred cause of action is constitutional at all, the inconvenience and hardship in defending such an action is amplified exponentially in such a circumstance. There is no question that the passage of 25 years dramatically increases the already substantial hardship of defending an action thousands of miles away from one's home.

C. FARMER, A Non-Resident, Is Not Subject To Personal Jurisdiction Solely Because The Alleged Acts Which Caused Harm In Rhode Island On

August 24, 1992, Took Place 25 Years Ago In California

This is not a case of a nonresident motorist who caused an injury while driving on California highways and is haled into California court within a year. Here, the alleged harm has not occurred in California, but in Rhode Island, and the causes of action arose long after defendant FARMER left California. Although the alleged acts were committed in California a quarter-of-a-century ago, this lawsuit arose on August 24, 1992, in Rhode Island, where CHEIT resides. (Complaint, ¶¶ 1, 13, and 18.) On the other hand, if the causes of action alleged herein arose 25 years ago, this action is barred by the applicable statutes of limitation. A young child sexually molested against his will suffers an actual and appreciable injury at the time and would be entitled to more than nominal damages. Evans v. Eckelman, supra, 265 Cal.Rptr. at pages 611-612; DeRose v. Carswell, supra, 196 Cal.App.3d at pages 1022-1023.

D. The Court Should Dismiss The Action Because California Is An Inconvenient Forum

Regardless of the Court's personal jurisdiction over FARMER, the Court has discretion to dismiss, or at least stay, the action on inconvenient forum grounds. Henderson v. Superior Court for the County of Los Angeles, 77 Cal.App.3d 583 (1978). Archibald v. Cinerama Hotels, Inc., 15 Cal.3d 853 (1976). In assessing the convenience of the forum, the Court's basic consideration is the relative convenience and fairness to the parties and witnesses. Denly v. MGM Grand Hotel, Inc., 137 Cal.App.3d 457 (1982). The relevant factors in this evaluation include: (1) the residence of the parties and witnesses; (2) the availability of

compulsory process for the attendance of witnesses; (3) the cost of bringing parties and witnesses to the place of trial; (4) the relationship of the transaction at issue to the forum; and (5) choice of law. Great Northern Railway Co. v. Superior Court, 12 al.App.3d 105, 113-114 (1970).

Application of these factors to the case at bar compels the conclusion that the action should be dismissed. As discussed above, defendant FARMER simply has no relationship to California. FARMER's witnesses are located outside California and thus are not subject to compulsory process for attendance at trial. Code of Civ. Proc. § 1989. The burden and expense of bringing willing witnesses from Texas to trial is substantial and unreasonable. Given these facts, the Court should dismiss or stay the action on the ground of inconvenient forum.

V.

CONCLUSION

This is a troubling case that raises scandalous allegations. However, the due process clause of the United States Constitution and California law prohibit the exercise of jurisdiction over this out-of-state defendant. Defendant FARMER respectfully requests that his motion to quash be granted.

Dated: November 19, 1993

[SIGNED]
CARLETON L. BRIGGS

ATTORNEY FOR SPECIALLY
APPEARING DEFENDANT
WILLIAM C. FARMER

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WILLIAM C. FARMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ROSS CHEIT, EARL CHEIT and JUNE CHEIT,	)	Case No. 954272
Plaintiffs,	)	
v.	)	DECLARATION OF DEFENDANT WILLIAM C. FARMER IN SUPPORT OF DEFENDANT FARMER'S MOTION TO QUASH SERVICE OF SUMMONS
SAN FRANCISCO BOYS CHORUS and THE SINGING BOYS OF SAN FRANCISCO BAY, a California corporation,	)	

WILLIAM FARMER, and DOES 1-100, inclusive,	)	OR TO STAY OR DISMISS ACTION
Defendants.	)	

Date: December 16, 1993
Time: 9:30 A.M.
Dept.: 10, Room 457
Trial Date: None
Arbitration Date: None

I, the undersigned, declare as follows:

1. I am one of the defendants in this action and have personal knowledge of each fact stated herein.

2. I reside and am domiciled outside the State of California. My address is Post Office Box 3301, Corpus Christi, Texas 78463. I am employed part-time (20 to 30 hours per week) as a teacher at a private school, in Corpus Christi, Texas.

3. I was served with copies of the summons and complaint in this action in the following manner and on the following date: by personal service in Corpus Christi, Texas, on October 4, 1993.

4. I maintain no residence or place of business within the State of California now or at the time this action was filed. My only contacts or relationship with, or activities within, the State of California prior to the institution of this action were as follows: I resided in California from 1944 until 1946; after a brief residency in North Carolina, I again resided in California from 1947 until 1969 (although I attended undergraduate school in New York). I attended graduate school in California and worked part-time as the pastor of a church from 1965 through 1968. I never owned any property within California. I was associated with defendant San

Francisco Boys Chorus ("SFBC") as a summer camp counselor in the summer of 1965. In 1966 and 1967, I helped out informally on four or five occasions at SFBC concerts. In 1968, I was the SFBC summer camp administrator. From late September of 1968 to the end of February of 1969, I served as the pastor of a community church in California. I moved to Oregon in May of 1969, and have had no contacts with California since, aside from an occasional visit to relatives.

5. This action is based upon causes of action which allegedly accrued 24 years after the contacts specified-in the preceding paragraph had ended. The complaint in this action is based on causes of action for battery, intentional infliction of emotional distress, fraud, negligent misrepresentation, negligent hiring, negligent supervision and negligent infliction of emotional distress, arising out of alleged acts or events that purportedly took place in California between 1965 and 1968. In order to bring the delayed accrual rule into play, plaintiffs allege that these causes of action accrued, and that the alleged harm occurred, on or about August 24, 1992, in the State of Rhode Island, and not in California.

6. I have not consented to the exercise of jurisdiction over me by the courts of the State of California, and I make this declaration only as a special appearance in support of the motion to quash service of summons or to dismiss.

7. It would be unfair and seriously inconvenient to me to have to defend this action in the courts of the State of California for the following reasons: (1) I cannot afford to travel to California, let alone stay there or bring witnesses there, in order to defend myself; (2) my wife, who would be an important defense witness, has just been diagnosed with uterine cancer and is expected to undergo surgery and radiation treatments, leaving her unable to travel to California in the foreseeable future, without

extreme hardship; and (3) I suffer from congestive heart failure, am undergoing treatment for Bell's palsy and am still recovering from injuries received in a head-on automobile collision which occurred in February of 1992.

8. An alternative forum for the maintenance of this action is available. I am subject to personal jurisdiction in the State of Texas.

9. I hereby consent and agree to submit to the jurisdiction of the courts of the State of Texas in any action instituted by plaintiffs on the causes of action sued upon herein.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 11/18/93 at Corpus Christi, Texas.

[SIGNED]
WILLIAM C. FARMER

Pertinent Text of Constitutional Provisions Involved

A. U.S. Constitution Amendment V

...[N]or shall any person . . . be deprived of life, liberty, or property, without due process of law. . .

B. California Code of Civil Procedure section 340.1

340.1(a) In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever occurs later.

C. California Code of Civil Procedure section 418.10

418.10(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion.